

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

CATHY M. COOK	:	CIVIL ACTION
	:	
v.	:	
	:	
GENERAL REVENUE CORPORATION	:	No. 01-1306

MEMORANDUM ORDER

This case arises out of collection actions taken by the defendant collection agency in connection with a debt plaintiff allegedly owed to Reading Area Community College ("RACC") of \$213.79. Defendant has filed a Motion to Dismiss and an Amended Motion to Dismiss. The only difference between the two motions is that the latter was signed by an attorney who is a member of the bar of this court.

Prior to filing each motion, defendant respectively filed an answer and an amended answer. The answers also are identical except for the signature of counsel. Defendant expressly states in the motions that it "moves the Court pursuant to Fed. R. Civ. P. 12(b)(6) to dismiss Plaintiff's Complaint for failure to state a claim upon which relief can be granted." Such a motion must be filed prior to the filing of an answer. See Fed. R. Civ. P. 12(b) ("[a] motion making any of these defenses shall be made before pleading if a further pleading is permitted").

Even if the court were to treat the motions as ones for judgment on the pleadings, the result would not change. The

standard is the same. See Institute for Scientific Info. Inc. v. Gordon & Breach Science Publishers, Inc., 931 F.2d 1002, 1005 (3d Cir.), cert. denied, 502 U.S. 909 (1991); Regalluto v. City of Philadelphia, 937 F. SuOpp. 374, 376-77 (E.D. Pa. 1995). Under that standard, a movant may prevail only when it clearly appears from plaintiff's allegations that she can prove no set of facts to support a claim which would entitled her to relief. See Conley v. Gibson, 355 U.S. 41, 45-46 (1957); Robb v. Philadelphia, 733 F.2d 286, 290 (3d Cir. 1984). Such a motion tests the legal sufficiency of a claim accepting the veracity of the claimant's allegations. See Markowitz v. Northeast Land Co., 906 F.2d 100, 103 (3d Cir. 1990); Sturm v. Clark, 835 F.2d 1009, 1011 (3d Cir. 1987).

Plaintiff alleges that defendant sent her a letter on January 16, 2001 stating that she owed Reading Area Community College \$213.79 when the debt in fact had been paid in full nearly seven years before. Plaintiff alleges that defendant sent communications regarding the purported debt to plaintiff's parents, her spouse and her spouse's place of employment, and improperly threatened legal action against plaintiff if she did not pay the sum demanded. Plaintiff claims that these actions violated the Fair Debt Collection Practices Act (FDCPA). See 15 U.S.C. § 1692e(5) and § 1692c(b).

Plaintiff also alleges that defendant acted intentionally to coerce her into paying the purported debt in violation of the Pennsylvania Fair Credit Extension Act ("FCEA"). See 73 Pa. C.S.A. § 2270.1. Plaintiff further alleges that defendant improperly obtained her credit report with knowledge or reason to know that the debt had been paid or otherwise was barred by the statute of limitations in violation of the Fair Credit Reporting Act ("FCRA"). See 15 U.S.C. § 1681b(a).

Defendant argues that it did not violate the FDCPA because plaintiff's debt was valid and submits an affidavit from an officer of RACC stating that plaintiff owed \$160.35 at the time she stopped making payments. It is axiomatic, however, that a plaintiff's allegations must be taken as true when considering a Rule 12(b)(6) or 12(c) motion. Plaintiff alleges that the debt in question was paid off in its entirety seven years before the collection activity began.

Defendant also argues that plaintiff cannot predicate a claim on unenforceability of the debt due to expiration of the statute of limitations as RACC is an agency of the Commonwealth and thus could collect the debt at any time under the doctrine of nullum tempus occurrit regi. This argument was expressly rejected in Northhampton County Area Community College v. Dow Chemical, 566 A.2d 591, 596-98 (Pa Super. 1989) (holding community college was not state agency and could not invoke

nullum tempes), aff'd, 598 A.2d 1288 (Pa. 1991) (per curiam).
See also Community College of Allegheny County v. Seibert, 601 A.2d 1348, 1352 (Pa. 1992) (community college is local agency for governmental immunity purposes); Bucks County Community College v. Bucks County Bd. of Assessment Appeals, 608 A.2d 622, 625 (Pa. Commw. Ct. 1992) (same).

Defendant also suggests that because the original creditor's records indicated that the debt had not been paid in full, defendant has a bona fide good faith defense to plaintiff's FDCPA claims. To sustain such a defense, defendant must show that its violative acts were unintentional and occurred despite the existence and operation of procedures reasonably expected to prevent such errors. See Adams v. Law Offices of Stuckert & Yates, 926 F. Supp. 521, 529 (E.D. Pa. 1996); 15 U.S.C. § 1692k(c). See also Smith v. Transworld Sys., Inc., 953 F.2d 1025, 1032 (6th Cir. 1992)(collector can raise a bona fide good faith defense that it relied on credit information provided by creditor if collector has procedures "reasonably adapted to prevent errors in amounts referred for collection"); Moya v. Hocking, 10 F. Supp.2d 847, 849-51 (W.D. Mich. 1998) (same). Defendant does not allege that it had reasonable procedures in place to prevent such errors and indeed did not even plead a bona fide good faith defense in its answer.

Defendant contends that "there is no evidence to support [plaintiff's] allegation" that defendant threatened her with legal action. Defendant notes that the January 16, 2001 letter attached to the complaint was a validation notice pursuant to 15 U.S.C. § 1692g(a) and did not threaten legal action. Plaintiff, however, did not allege that this letter threatened legal action, but rather that defendant threatened legal action after the January 16, 2001 letter was sent. A plaintiff, of course, need not produce evidence to support her allegations to survive a motion to dismiss.

Defendant's additional arguments that it did not in fact send dunning notices to third parties and that it could legally obtain plaintiff's credit report because the debt was not in fact paid in full and there was no statute of limitations on the debt are similarly deficient.

ACCORDINGLY, this day of August, 2001, **IT IS HEREBY ORDERED** that defendant's Motion to Dismiss (Doc. #6) and Amended Motion to Dismiss (Doc. #9) are **DENIED**.

BY THE COURT:

JAY C. WALDMAN, J.